## 1 TABLE OF CONTENTS 2 3 STANDARD FOR SUMMARY JUDGMENT...... I. 4 II. PLAINTIFF'S FIRST CAUSE OF ACTION AGAINST PSS ALLEGING A VIOLATION OF HER FREE SPEECH RIGHTS MUST BE DISMISSED......2 5 Α. The U.S. Supreme Court follows a two-step analysis for evaluating public В. 6 7 What Speech? Perceived Free Speech Is Not Protected Under the First C. Amendment .....4 8 The Speech Must Relate To a Matter of Public Concern......6 D. E. Plaintiff's interest in the speech is outweighed by the school's need to 9 operate an efficient system......9 10 Absent Any Perceived Free Speech Hopwood Junior High School Would Not F. Have Renewed Black's Employment Contract......12 11 PLAINTIFF'S THIRD CAUSE OF ACTION (CIVIL RIGHTS) MUST BE III. DISMISSED AS A MATTER OF LAW......15 12 13 Plaintiff Had No Right To Tenure and No Property Interest in Continued A. 14 Black's liberty interest was not implicated by reason of Hopwood Junior В. 15 High School's recommendation not to renew Black's contract. .......... 17 16 C. Even if any due process rights exist, Black received due process when the 17 Board heard her grievance regarding performance evaluation and letters of concern and reprimand issued by Principal Brewer......19 18 19 Plaintiff has failed to establish any invasion of privacy claim......20 D. 2.0 PLAINTIFF'S FOURTH CAUSE OF ACTION CLAIMING INTENTIONAL IV. INFLICTION OF EMOTIONAL DISTRESS SHOULD BE DISMISSED......21 2.1 PLAINTIFF'S FIFTH CAUSES OF ACTION CLAIMING NEGLIGENT 22 V. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS SHOULD BE 23 DISMISSED......24 24

PLAINTIFF'S SIXTH CAUSES OF ACTION CLAIMING BREACH OF CONTRACT SHOULD BE DISMISSED.......26

25

VI.

\_

## TABLE OF AUTHORITIES

**CASES** 

3

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

Anderson v. Brigham Young University, 879 F. Supp 1124 (D.Utah 1995)......26 Anderson v. Liberty Lobby Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L.Ed. 2d 202 (1986) ...2 Arriola v. Insurance Company of North America, 2 C.R. 113, 121 (Com.Tr.Ct. 1985)..... 21 Ballard v. Blount, 581 F. Supp 160 (D.C.GA.1983)......7 Barnes v. McDowell, 848 F.2d 725, 735 (6th Cir.1988), cert. denied, 488 U.S. 1007, 109 S.Ct. Board of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)....16, 17, 18 Cafeteria and Restaurant Workers v. McElroy, 367 U.S. 886, 895-896, 81 S.Ct. 1743, 1748-Capriotti v. Consolidated Rail Corp., 878 F.Supp. 429, 433 (N.D.N.Y.1995)......26 Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265 at 1273 (10<sup>th</sup> Cir. 1979)...........21 Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)...16 Commonwealth v. Aldan, 1997 MP 31, 5 N.M.I. 139 (1997)......21 

ii

Consolidated Rail Corp. v. Gottshall, 512 U.S. 532, 114, 114 S.Ct. 2396, 2402, 2411-12, 2416,
129 L.Ed.2d 427 (1994)
Coszalter v. City of Salem, 320 F.3d 968, 973-74 (9th Cir. 2003)6
Cox v. Roskelly, 359 F.3d. 1105 (9 <sup>th</sup> Cir.2004)
Davis v. West Commty. Hosp., 755 F.2d 455, 460-61 (5 <sup>th</sup> Cir. 1985)7
Dyack v. Commonwealth of the Northern Mariana Islands, 317, F.3d 1030, 1033 (9th
Cir.2003)
Farhat v. Jopke, 370 F.3d 580 (6 <sup>th</sup> Cir. 2004)
Ferrera v. Mills, 781 F.2d 1508, 1514 (11th Cir. 1986)7
Finch v. Ford Bend Indep. Sch. Dist., 333 F.3d 555 (5 <sup>th</sup> Cir. 2003)8
Ford v. Revlon, Inc., 153 Ariz. 38, 734 P.2d 580 (1987)
Garcetti v. Ceballos, 126 S.Ct. 1951, 1958 (2006).
Guise v. Dept. of Justice, 330 F.3d 1376 (C.A. Fed Cir., 2003)9
Estate of Hillblom (Superior Ct. Order Regarding Sealing of Claims) Civ Action No. 95-0626
(1995)
Hirschheimer v. Associated Metals & Mineral Corp., 1997 U.S. Dist. LEXIS 12838, 1997 WL
528057 (S.D.N.Y.1997) (Not Reported)
Hofschnieder v. Demapan-Castro, No. CV-04-0022-ARM, (D.C.N.Mar.I 2005)(unpublished
decision)
Jones v. Collins, 132 F.3d 1048, 1052-55 (5th Cir.1998)
Keiter v. Penn Mutual Ins. Co., 900 F.Supp 1339, 1348 (D.Haw.1995)21
Kelly v. Ogata, 120 F.Supp.2d 1244, 1250 n.6 (D.Haw.2000)
Khuans v. School Dist. 110, 123 F.3d 1010, 1016-17 (7 <sup>th</sup> Cir. 1997)7
Lee Bok Yurl Yoon Young Byuang, Civil Action No. 99-0085 (N.M.I. Super Ct. March 3,
2000)

iii

## 

<i>Linhart v. Glatfelter</i> , 771 F.2d 1004, 1010 (7 <sup>th</sup> Cir. 1985)	7
Lupo v. Wyeth-Ayerst Laboratories, 4 F. Supp. 2d 628 (E.D. Tex. 1997)	23
Matthews v. Harney County, 819 F.2d 889, 891 (9th Cir.1987)	17
McKinley v. City of Eloy, 705 F.2d 1110, 1113 (9th Cir.1983)	3
McMurphy v. City of Flushing, 802 F.2d 191, 197-98 (6 <sup>th</sup> Cir. 1986)	7,
Metzger v. Da Rosa, 367 F.3d 699 (7 <sup>th</sup> Cir. 2004)	8
Miller v. State, 18 Cal.3d 808 (1977)	16
Murphy v. American Home Products Corp., 448 N.E.2d 86 (N.Y. Ct. App. 1983)	23
Mustafa v. Clark County School District, 157 F.3d 1169 (9 <sup>th</sup> Cir. 1998)	18
Pickering v. Board of Education of Township High School District 205, 391 U.S. 563, 88 S	S.Ct.
1731, 20 L.Ed.2d 811 (1968)3,	6, 9
Prestopnik v. Whelan, 253 F.Supp.2d 369, 374 (N.D.N.Y. 2003)	4
Roe v. City of San Francisco, 109 F. 3d 578, 585-86 (9 <sup>th</sup> Cir. 1997)	7
Saye v. St. Vrain Valley Sch. Dist., 785 F.2d 862, 366 (10 <sup>th</sup> Cir. 1986)	8
Sharp v. Lindsay, 285 F.3d 479 (6 <sup>th</sup> Cir. 2002)	10
Sigmon v. Parker Chapin Flattau & Klimpl, 901 F. Supp. 667 (S.D.N.Y. 1995)	23
Steadman v. Texas Rangers, 179 F.3d 360 (5th Cir. 1999)	4
Strasburger v. Board of Educ., Hardin County Community Unit School Dist. No. 1, 143 F.3	d 35
(7 <sup>th</sup> Cir. 1998), reh'g and suggestion for reh'g en banc denied, (June 26, 1998) and cert. den	nied,
1999 WL 8065 (U.S. 1999)	23
Sullivan v. Ramirez, 360 F.3d 692 (7 <sup>th</sup> Cir. 2004)	
Thomas v. Douglas, 877 F.2d 1428 (9th Cir. 1989)(citing Ford v. Revlon, Inc., 153 Ariz. 38,	, 43,
734 P.2d 580, 585 (1987)	22
Waters v. Churchill, 511 U.S.661, 697, 114 S. Ct 1878, 128 L.Ed.2d 686 (1994)	2
Yballa v. Sea Land Services, Inc., 919 F. Supp 1428, 1434 (D.Hawaii 1995)	25,26

iv

1	
2	CONSTITUTIONAL AUTHORITY
3	C.N.M.I. Const. Article 1 § 5
4	C.N.M.I. Const. Article 1 § 10
5	Analysis of Constitution of the CNMI20,21
6	CNMI STATUTES
7	7 CMC § 250230
8	1 CMC § 8252(a)(8)(iii)
9	1 CMC § 9918
10	PSS RULES AND REGULATIONS
11	PSS Regulation § 3404
12	PSS Regulation § 1501
13	PSS Regulation § 150217
14	RULES OF PROCEDURE
15	Fed. R. Civ. P. 56
16	TREATISES
17	72 Am.Jur.2d States, Territories and Dependencies § 75 (2001)
18	Restatement of Torts § 46
19	
20	
21	
22	
23	
24	
25	

\_

- vi